

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The discipline assessed Extra Gang Foreman W. Santoscoy for alleged violation of various company rules as indicated in Mr. M. C. Frey's letter of October 7, 1988 and the affirmation of that decision by Mr. Frey in his letter of November 16, 1988 and by Assistant Director of Labor Relations R. D. Rock in his letter of February 9, 1989 are arbitrary, capricious and unwarranted.

(2) The Carrier's handling of this discipline matter was also procedurally defective as explained in the Organization's correspondence of November 3, 1988 and January 3, 1989.

(3) Due to the validity of Parts (1) and (2) it is claimed that Mr. Santoscoy's record must be cleared of the discipline referred to in Part (1) hereof and he must be returned to service with all rights restored unimpaired and compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Los Angeles California on September 20, 1988 to develop the facts and determine his responsibility, if any, in alleged misuse of Company Rapidrafts on Thursday, September 1, 1988 at the Bartz Chevron located at 7th Avenue, City of Industry, when he allegedly purchased gasoline for Gelco Unit 1915-61656, for vehicle assigned to Gang No. 7964 under his jurisdiction and receive cash for the cash discount. Pursuant to the investigation the claimant was dismissed from the service of the Carrier.

W. S. Oakden, Manager of Track Maintenance, was notified there was discrepancy in a Rapidraft used in Los Angeles. He stated that after reviewing the information he removed the claimant from service pending an investigation. He testified that the Rapidrafts contained a statement "Apply Cash Discount." Mr. Oakden stated that all of his information came from Special Agent Jenson.

Special Agent Dennis Jenson testified that he received knowledge that employees from the Union Pacific Railroad were using cash back from Rapidrafts after purchasing gasoline on September 1, 1988. Mr. Jenson testified that he and Special Agent Don Tyler approached the claimant and asked him if he, in fact, received

cash back after purchasing fuel, and the claimant answered "yes." He further testified the claimant told him he had on numerous occasions received cash back over a period of time and further stated that it was common practice and he had done so for years. Mr. Jenson testified that the claimant further stated he had used the money for the purchase of wax for his Company vehicle, window washing fluid and other items such as that.

Mr. Jenson stated that Rapidraft 06460723, which was given to him by the claimant as a draft he utilized the morning of September 1, 1988 at Bartz Chevron indicated 28 gallons of fuel for a total of \$34.38 which computes to \$1.22 and 7/10 per gallon.

Mr. Jenson then testified the claimant told him that later on that day he returned to the Bartz Chevron, and the advertised price per gallon for self-service pump was \$1.01 and 9/10 per gallon, and the super unleaded was \$1.22 and 9/10 per gallon, and the unleaded price was \$1.06 and 9/10 per gallon for self-service.

The claimant testified he got \$2.38 cash back on the date in question. He stated he had always taken that money and kept it in a kitty they used to buy products for the truck. The claimant testified that when Mr. Jenson asked him how long that had been going on, he stated the policy had been going on for years, but he had not accepted cash rebates for years. The claimant testified he kept the cash rebates in his shaving kit which he kept locked in his truck.

The claimant further testified that Mr. Dannelly told the employees he wanted those trucks cleaned up and kept clean. He stated that his other truck got a medallion for having the cleanest truck in that area.

The claimant testified this was the only means they had to obtain money for wax, windex, paper towels, etc. He testified they purchased gasoline about every third day, but they did not wash the windows each time because they were in a hurry to get in and out. He testified he never used any of the cash for his own personal use.

M. E. Canevit, Road Equipment Operator, testified that he was with the claimant when he purchased the gasoline on the date in question and saw the claimant give the Rapidraft, and he thought that he received cash back and believed the claimant put the cash in his black bag, which was the kitty.

Operator Canevit testified that the kitty was for purchasing things to keep the trucks up, and the reason for that was that they were not provided with windshield cleaner or paper towels or anything like that, and they wanted to take special care of their trucks. He stated he had seen the claimant buy Armorall and buy refills for

Armorall and also buy paper towels and windex. He further stated that at one time he got cash back, and he gave it to the claimant who put it in the kitty.

Paul Dannelly, Manager of Engineering Maintenance for the service unit testified he had instructed the employees to take good care of their trucks and to have them look good and the appearance nice. He testified he told them to find a car wash or a detail shop periodically, usually from a month to two months. He stated that sometimes he expected the employees to wash the cars but not to wax them.

Manager Dannelly further stated that he had told the employees who came to him that they could purchase the necessary supplies with the Gelco Rapidraft or else FPO them. He stated employees could use a Rapidraft for a car wash or towels, windex, armorall or wax.

The Union contends there is a discrepancy between Mr. Dannelly's testimony and the Special Agent's testimony as to whether the Rapidrafts can be used to purchase windex, armorall, towels or wax. The Union also contends the claimant was prejudged by the Carrier since he was removed from service.

The Board has reviewed all the testimony of record and the exhibits submitted by the parties. The evidence is clear and sufficient for the Carrier to find that the claimant was guilty as charged. The Rapidraft states on its face that it is not to be used for cash.

The Board has examined the evidence regarding the Rapidraft for the date in question. If the claimant purchased regular gas, the difference in the cost of fuel of \$34.38 and what the cost should have been was \$5.88. If the claimant purchased unleaded gas, the difference would have been \$4.48.

When an employee purchases gas approximately every third day, this sum amounts to a substantial total with which to buy paper towels, wax, windex, etc. This is especially true when they are authorized to have their pick up detailed on a regular basis. The detail job includes the vehicle being waxed. The Board also notes that the Rapidraft states on its face that it is not valid for cash.

The evidence may be insufficient for the Carrier to find that the claimant converted the funds to his own use, but the claimant did misuse the Rapidrafts in such a manner as would allow funds to be diverted.

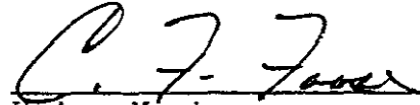
The Board has carefully studied all of the evidence and testimony submitted by the parties. It is always difficult to reach decisions in termination cases. After much deliberation it is the opinion of

the Board that the Board does not have the privilege of overruling the decision of the Carrier under the circumstances existing herein.

AWARD: Claim denied.

Dated: July 21, 1989.

  
Preston J. Moore, Chairman

  
Union Member

  
Carrier Member